

Service Date: June 25, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of Burlington Northern Railroad)	
Company to Discontinue its Agency)	DOCKET NO. T-9464
Operations and Dispose of the)	
Depot at Stanford, Montana.)	ORDER NO. 5995

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Charles C. Dearden, Attorney at Law, Burlington Northern Railroad Company, Murphy, Robinson, Heckathorn and Phillips, P.C., One Main Building, Kalispell, Montana 59903-0759

FOR THE COMMISSION:

Robin A. McHugh, Commission Attorney, 2701 Prospect Avenue, Helena, Montana 59620-2601

Wayne Budt, Transportation Division, 2701 Prospect Avenue, Helena, Montana 59620-2601

BEFORE:

CLYDE JARVIS, Chairman and Hearing Examiner

BACKGROUND

On October 18, 1989 Burlington Northern Railroad Company (BN) filed a petition with the Public Service Commission (Commission) for authority to discontinue its agency and dispose of the depot facility at Stanford, Montana.

Following issuance of proper notice a public hearing was held on December 12, 1989 in the City Council Chambers, City Hall, Stanford, Montana. No protests were filed prior to the hearing, however, several public witnesses testified in opposition to the petition. At the conclusion of the hearing it was stipulated by all present that the Commission may issue a final order.

SUMMARY OF TESTIMONY

James D. Whittmyer, manager of customer service for BN, appeared and testified in support of the petition. Mr. Whittmyer explained that car orders from shippers in the Stanford area are placed directly with the central agency in Great Falls. He further explained the mechanics of car orders through the Great Falls agency and described how a car is dispatched to the shipper and forwarded to destination. He said that shippers who encounter a problem with an order can contact the central agency directly; the central agency can then address the problem by communicating with the necessary railroad personnel. Mr. Whittmyer indicated that BN has received no objections to this petition from shippers. Mr. Whittmyer said that the present Stanford agent has very little to do other than incidental work such as track line-ups and communication with local trains. He explained that

the present agent in Stanford, Keith Sorkness, is a protected employee and can find alternative employment with BN. Mr. Whittmyer said that BN continues to use the depot building but wants the option to dispose of it later if it is not needed.

Charles F. Scheibe, manager of data quality for BN in the northern region, appeared and testified in support of the petition. Mr. Scheibe explained that with new technology BN can now direct cars from many miles away through regional centers or central agencies like Great Falls. Mr. Scheibe said that BN believes it can better serve its customers from central agencies through computer technology. He acknowledged, however, that shipper problems cannot always be solved over the phone and that personal contact is sometimes necessary. For that reason, Mr. Scheibe explained that BN has created a customer service representative (CSR) position that is designed to respond to complaints and to go into the field when necessary to solve customer problems. CSRs are armed with lap-top computers that can connect to the central agency over the phone lines. In this way the CSR has access to all current information about customers who need assistance. Local agents are not trained to use the lap-top computers. Mr. Scheibe said there is a CSR in Great Falls who serves the Stanford area.

Charles E. Keeler, BN trainmaster in Great Falls, appeared and testified in support of the petition. Mr. Keeler gave a general description of the operation of the trains and train crews in the Stanford area. He said that discontinuance of the Stanford agency would have no effect on train service.

William T. Albright, senior cost analyst for BN, appeared and testified about rail traffic at Stanford. Mr. Albright sponsored and explained BN's Exhibit A, which includes the following:

- a) Carload commodity statistics by month for Stanford for the years 1986, 1987, 1988 and the first nine months of 1989;
- b) Traffic statistics for Stanford, Montana for the years 1986, 1987, 1988 and the first nine months of 1989;
- c) Number of units handled and time consumed computed on a unit time factor basis for Stanford, Montana for the year 1988;
- d) Number of cars and freight service revenues at Stanford, Montana for the years 1986, 1987, 1988 and the first nine months of 1989;
- e) Direct agency expenses for the agency at Stanford, Montana for the years 1986, 1987, 1988 and the first nine months of 1989;
- f) Net results of the operation of agency service at Stanford, Montana for the years 1986, 1987, 1988 and the first nine months of 1989.

James T. Mular, legislative director for the Transportation and Communications International Union (TCU), appeared and testified on behalf of the TCU in opposition to the petition. Mr. Mular described some of the duties of an agent and indicated that if both the Stanford and Lewistown agencies are closed there will be no agency service between Great Falls and Billings. He said that agents perform certain functions that are important to railroad safety. According to Mr.

Mular, the BN will not save any money by closing the Stanford agency. Mr. Mular sponsored the following proposed exhibits:

TCU Exhibit No. 1 -- A BN document titled "Positive Inspection Program For Agents, OS&D Clerks and Other Station Employees."

TCU Exhibit No. 1A -- BN Presentation Form for Loss or Damage Claims.

TCU Exhibit No. 2 -- A BN document titled "Agency Manual of Instructions."

BN objected to the admission of these proposed exhibits as irrelevant to a consideration of public convenience and necessity, and the hearing examiner took the objections under advisement.

Matt Pepus, a bridge inspector for BN and a member of the Brotherhood of Maintenance and Way Employees, appeared and testified on behalf of his union in opposition to the petition. Mr. Pepus said the union is opposed because Stanford is the main link over 222 miles of track between Great Falls and Laurel. He said that maintenance crews contact the Stanford agent by radio as a backup when the usual methods of communication are not functioning. He further said that he believes the Stanford agent is a vital link to maintenance crews and that the absence of a Stanford agent could cause safety problems due to breakdowns in communication. BN objected to Mr. Pepus' testimony on the grounds that safety matters do not relate to a consideration of public convenience and necessity.

Keith Sorkness, BN agent in Stanford, appeared and described his duties. He said that he does have radio contact with track crews and handles messages when the ordinary communication system breaks down. He said that he occasionally gets calls from customers and conducts several roll-by inspections each week.

Don Anderson, a barber in Stanford, appeared and testified in opposition to the petition. He said that the agents are helpful in promoting local business and he thinks BN has tried to discourage business in Stanford.

Jerry Dombrouske, a District Ranger in the Lewis and Clark Forest, appeared and testified in opposition to the petition. Mr. Dombrouske said that a local agent provides a needed connection between BN and the local people.

Loyde Schmitt, a former mayor of Stanford, appeared and testified in opposition to the petition. Mr. Schmitt said the agency should be upgraded, not eliminated. He said the agent should promote and develop markets for the railroad, and he cited the possibility of mining in the Stanford area that could produce business for BN. Mr. Schmitt said BN needs to maintain a presence between Great Falls and Laurel, and Stanford is a good location. Mr. Schmitt sponsored proposed public exhibit number 1, a letter from several residents of Stanford to Wayne V. Eisenman, General Manager of BN in Havre.

Ed Hall, a farmer near Stanford, appeared and testified that there might be coal mining in the Stanford area. He said that the railroad may be needed to ship products other than grain from the Stanford area. He said he is a shipper of grain but has not had occasion to use the local agent.

Jess Alger, who grows wheat and barley in the Stanford area, appeared and testified in opposition to the petition. Mr. Alger said he ships on BN and does not get the same personal service from the Great Falls office. He said that he last shipped by rail in 1986.

Judy Tureck, a farmer in the Stanford area, appeared and testified in opposition to the petition. She indicated that, as a farmer, she should be considered a shipper as defined in the

McCarty farms case. (In McCarty Farms v. BN, the United States District Court for the District of Montana, Great Falls Division, found that farmers who shipped grain by rail, but were not directly involved in arranging the rail transportation, had standing as a class to sue BN over allegedly unreasonable rates.)

Tom Evans, a farmer and rancher from the Stanford/ Gyser area, appeared and testified in opposition to the petition. Mr. Evans said that railroad service has declined over the years. He said that agents can be useful to residents of the area in ways unrelated to shipping. He said the agent can be useful in assisting with problems like livestock on the right-of-way, down fences, and weeds along the right of way.

Gene DeMars, a State Representative and farmer from the Stanford area, appeared and testified in opposition to the petition. He said the agent is part of the community and serves as an ombudsman between customers and the railroad.

Arnold Haack, a County Commissioner in Judith Basin County, appeared and testified in opposition to the petition. He said he hates to see anything eliminated that means a loss of tax dollars to the county.

Mina Worm, a Stanford ambulance attendant, appeared and testified that there have been occasions when a train had to be moved to allow the ambulance to pass. She wanted to know who is responsible for this in the absence of the agent.

Gary Robert Worm appeared and testified that he was hit by a train in Stanford. He said that as a result of this accident a crossing was erected but that a local agent is necessary to watch the crossing.

DISCUSSION

Commission authority to close a railroad agency is provided at 69-14-202, MCA, which reads as follows:

69-14-202. Duty to furnish shipping and passenger facilities. (1) Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility. In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

The Commission interprets this section as requiring an analysis of the impacts of a proposed closure on shippers and the general public.

There is scant, if any, testimony on this record from which the Commission can conclude that the closure of the Stanford agency would impose a burden on shippers. BN indicated that it has not received any complaints about the proposed closure. Of the public witnesses, Mr. Jess Alger indicated that he has shipped on BN and prefers a local agent because he does not get the same personal service out of the Great Falls offices. However, Mr. Alger has not shipped by rail since 1986 and thus could not testify about current service out of the Great Falls office. Further, Mr. Alger's preference for a local agent falls far short of a demonstration that public convenience and

necessity demands a local agent. For purposes of this proceeding a shipper is defined as someone who arranges for the transportation by rail of his own commodities or those of another. Under that definition, Mr. Alger was the only shipper witness to appear at this hearing, and his testimony does not support a denial of the petition.

With respect to an analysis of the impacts of a proposed closure on members of the general public the Commission has written:

For the Commission to deny an application of this kind, primarily on the basis of impact on persons other than shippers, it needs to be convinced either 1) that, in the absence of an agent, the community will experience serious safety problems as a result of railroad operations, or 2) will experience other significant problems related to railroad operations that an agent is uniquely able to prevent or solve.

In the Matter of the Application of Burlington Northern Railroad Company to discontinue its Agency and Dispose of the Depot Facility at Hysham, Montana, Order No. 5866, p. 15. Several safety concerns were raised by witnesses at the hearing. Matt Pepus indicated that the Stanford agent provides an important communication backup when the normal communication system does not function. Mina Worm expressed concern that getting a train parted to allow the ambulance to pass may be more difficult without an agent. Gary Worm indicated that the agent should remain in order to deal with any problems related to the crossing. While the Commission is sympathetic to these safety concerns, and has and will continue to do everything in its jurisdiction to promote and enforce all aspects of railroad safety, it finds that the retention of the Stanford agent is neither necessary nor sufficient to address the safety concerns expressed. The agent at Stanford works 40 hours per week over five days. The present agent does not reside in Stanford. The safety concerns expressed, for the most part, need to be addressed 24 hours per day, seven days a week. If there are communication

problems in the Stanford area that affect the safety of railroad crews, the Commission will investigate such problems if asked to do so. Similarly, if there are safety problems at the Stanford railroad crossing the Commission will address those problems pursuant to its statutory authority. However, this record does not establish 1) that serious safety problems exist, nor 2) that any safety problems that do exist can be solved by maintaining an agent. Though the record in this case demonstrates a strong preference that the local agent remain, the Commission finds that the record does not demonstrate that, in the absence of an agent, the Stanford community will experience serious safety problems related to railroad operations. Further, the Commission finds that the record does not demonstrate that the Stanford community will experience other railroad related problems in the absence of an agent.

CONCLUSIONS OF LAW

The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Montana Code Annotated, Title 69, Chapter 14.

The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to Montana Code Annotated Title 2, Chapter 4.

No set rule can be used to determine whether or not the public convenience and necessity require a given service to be performed. The facts in each case must be separately considered and from those facts the question is to be determined. See Chicago, M. St. P. and P.R.G. v. Board of Railroad Commissioners, 126 Mont. 568, 225 P.2d 346 (1953), cert. denied 346 U.S. 823.

Public Convenience and Necessity does not require the maintenance of the agency at Stanford, Montana.

The Commission concludes that BN may remove the Stanford depot. Prior to its disposal, BN should determine whether the building is of historical significance and preserve it if it is historically significant or allow local governments in the area the opportunity to utilize the building. The Commission directs BN to inform the Commission in writing of the disposition of the building.

ORDER

NOW THEREFORE IT IS ORDERED that BN's petition to discontinue its agency and dispose of the depot facility at Stanford, Montana is Granted.

IT IS FURTHER ORDERED that, within 30 days from the date of this Order, BN will submit to the Commission a written response to the safety concerns expressed on the record in this proceeding. Specifically, BN should address 1) the concern expressed over the safety of work crews in the event of a malfunction in the normal communication system, and 2) the concern expressed over a blocked crossing in the event an ambulance needs to pass. If the BN considers the concerns legitimate, it should detail any steps that have been or are being taken to alleviate the concerns. If the BN does not consider the concerns legitimate, it should explain its reasons in detail.

IT IS FURTHER ORDERED that BN's objections to the admission of evidence and motion to strike certain testimony are Denied and all proposed exhibits and testimony are made part of the record and have been given the weight they deserve in Commission deliberations.

IT IS FURTHER ORDERED that BN shall apply 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that this Order be effective immediately and that a full, true and correct copy of this Order be mailed forthwith to the Applicant and all parties of record.

Done and Dated this 25th day of June, 1990 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.